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THE DOMINION LEGAL CONFERENCE, EASTER, 1949.

AUCKLAND members of the profession have waited a long time for a Dominion Legal Conference to be held in their city. Since 1930, when the second Dominion Legal Conference was held there, world events have twice interfered with the accepted sequence of those Conferences, with the inevitable result that Auckland's turn has come nineteen, instead of eight, years later.

This year, Auckland practitioners will be the hosts of their brethren from all parts of New Zealand. Those who had the pleasure of attending the Auckland Conference in 1930 remember the brilliance of that gathering; and the passing years have not dimmed their appreciation of the great hospitality they received on that occasion.

At the Civic Welcome with which the Wellington Conference in 1947 was opened, the President, Mr. J. R. E. Bennett, said:

> It is desirable and necessary that the profession should meet together in conference. Many problems confront us—domestic problems and national problems—and it is for us, now, to take stock of the position and so organize our profession and our work that we may continue to render useful and sympathetic service to the public. Our activities fall naturally under two headings—work and social gatherings.

Anyone who has attended these Conferences knows that, as Mr. Bennett later indicated, the profession's deliberations result in ideas being formulated which assist them to play their part in the community in upholding respect for the law, and its due and impartial administration. But experience has shown that the social gatherings also play a great and a lasting part in maintaining the corporate life of the profession itself, since, by the bringing together of members of the legal family in a Dominion-wide reunion, the informal interchanges of ideas and the fostering of a sense of fellowship can result in nothing but good in the individual and in the scattered community of the law of which he is an integral part.

The coming Conference will be the seventh of the series. It was hoped, originally, that the Dominion Legal Conference would be held at yearly intervals; but the vicissitudes of the times through which we have passed in the last nineteen years—first, the world-wide economic depression, and, later, the world war—had their effect in the frequency with which that plan has undergone alterations and postponements. The resumption of biennial legal conferences came with the sixth of the series, held in Wellington in April, 1947. The Conference during next month—to be held at Auckland in Easter week, or more precisely on April 20, 21, and 22—is, therefore, of special importance as the second of what we now hope will be an uninterrupted sequence of Dominion Legal Conferences held every two years, with regular rotation according to the amended design of those gatherings. We trust, therefore, that members of the profession, wherever they may practise, will make it their earnest endeavour to be in Auckland next month. Only by general co-operation in this way, will the successful future of these Conferences be reared on the foundations so well laid in Wellington in 1947.

Writing of the last Auckland Conference in these pages, the former Editor of this Journal said of the complete success of that Conference:

> Well attended, and well organized both on its business and on its social side, the standard set by its predecessors was in every respect maintained.

The present Editor, having been privileged in being given a preview of the arrangements being made in Auckland at the present time, can assure practitioners that the coming Conference will, if anything, exceed in quality, both on the professional side and on the social side, anything that was done in Auckland on the last occasion when the Conference was held there.

THE HISTORY OF THE DOMINION LEGAL CONFERENCES.

The history of the Dominion Legal Conferences is an interesting one.

Largely due to the initiative of Mr. W. J. Hunter (as the learned Chairman of the Price Tribunal then was), the first Dominion Legal Conference was held at Christchurch at Easter, 1928. Then termed by a speaker "the legal Parliament of New Zealand," and designed to be a recurring festival, the remarkable success and enthusiasm of that gathering led the profession to hope for its continuance at yearly intervals. As we shall see, this hope was fulfilled with regard to the first three of the series, because the Christchurch Conference of 1928 was followed by that held in Wellington in 1929, and by the gathering at Auckland in 1930.

The first Conference was under the presidency of Mr. Alexander Gray, K.C., President of the New Zealand Law Society. Reference to the agenda paper shows that the matters discussed at the formal meetings were of great interest to the general body of the public, as well as to the profession itself. The general interest taken in the gathering was aroused by the ample reports of the proceedings appearing in the Press, and there was

every proof that the subjects discussed showed that the profession was well entitled and able to give a lead to public opinion in matters of general importance, as well as eager to discuss its readiness and ability to improve and extend its service to the public in professional and other directions. This has always been a feature of the Conferences which have since been held. The social side was designed to bring members of the profession together to get to know one another, and, in an informal way, to bring about a spirit of unity and co-operation in their daily professional lives.

The second Dominion Legal Conference was held in Wellington on April 3, 4, and 5, 1929. His Excellency the Governor-General, Sir Charles Fergusson, attended and gave the inaugural address, which was one of the highlights of the proceedings. As in all the subsequent Conferences, the Attorney-General for the time being was present throughout. Sir Thomas Sidey, who was then the holder of that office, gave an address on Legal Education. Mr. M. Myers, K.C. (as Sir Michael then was), took part in the discussions, it being his last Conference as a member of the Bar. In Auckland, at the succeeding Conference, he was to address the profession as Chief Justice. The social functions were a noteworthy feature of the proceedings.

In 1930, the scene was changed to Auckland. In what is so far its only Conference, Auckland practitioners well earned, for themselves and the gathering, the plaudits that the visitors accorded them. The Chief Justice, Sir Michael Myers, favoured the Conference with an inaugural address, which, apart from anything else—as was remarked in this place at the time—was a striking illustration of the fact that, to use His Honour's own words, "those who leave the Bar and become Judges do not lose their interest in, and sympathy with, those who were their brother practitioners." (In passing, it will be remembered that the second Conference at Christchurch, in 1938, was honoured by the presence of the Chief Justice and three of his brother Judges). There was a remit at the Auckland Conference recommending that the Conferences be held every other year, instead of annually. It was heavily defeated, as it was the opinion of that—until then the most largely-attended—Conference that their value was too great to permit a departure from the view that they should be held annually. Unfortunately, as we know, circumstances not within the profession's control have since caused long intervals between Conferences, so that any further mention of annual gatherings has long since been postponed. It is interesting to note that a great part of the success of the second Dominion Conference was due to the joint secretaries. As Mr. A. M. Goulding, S.M., and Mr. R. M. Algie, M.P., they have since become well known to a larger public.

In due course, the next Conference should have been held at Dunedin, in the Easter week of 1931. Conditions in the profession, which reflected those being suffered by the whole community, both here and overseas, at the time, compelled the New Zealand Law Society in February, 1931, to postpone the Conference "until next year." That was, however, too optimistic a view of the situation; and it was not until the year 1936 that the improvement in world-conditions justified the resumption of the Conference series.

As the result of the infectious enthusiasm which optimism infused into the careful preparations made by the members of the Law Society of Otago, and of the resulting trust created in their brethren in other parts of New Zealand, real success attended the fourth Dominion Legal Conference, which took place in Dunedin. It was inspired with the spirit of a happy feeling of family reunion. From this Conference dates the resurgence of the desire for law reform, based on the experience of the profession as a whole, and appreciated by an Attorney-General who took part in the discussions and has since seen through the Legislature the measures of reform indicated at the Conference, with the assistance of a representative Law Revision Committee, which he set up as the necessary result of the discussions at Dunedin. The cheeriness of all the social functions, and the all-pervading kindness and hospitality of the hosts and hostesses, made everyone hope that, once again, the Conferences would succeed each other in a two-yearly sequence for a very long time to come.

Nothing untoward intervened to prevent the holding of the Conference two years later. This time, it was the turn of the Canterbury District Law Society, whose efforts to make the gathering the great success it proved to be were reflected in the intellectual and social pleasures which alternated throughout the succession of busy days and strenuous nights. In our own summary of those proceedings, in this place, we made no excuse for giving precedence to the social side of the Conference, because, as we said, for those who attended it, that *was* the Conference. We added this:

> As speaker after speaker, from His Honour the Chief Justice and the Honourable the Attorney-General downwards, emphasized, the opportunity afforded for making social contacts among the usually widely-scattered members of the legal profession in the Dominion was the Conference's outstanding benefit. They met at Christchurch—men from the far North and the farthest South, and others from the cities and towns between—and they learned to know one another. And the efficacious solvent, to which all influences of time or place or distance yielded, was provided by the unwearied hospitality and limitless goodfellowship of their welcoming brethren of the Canterbury Law Society, and their ladies.

The realization was superior to the anticipatory feelings of everyone present at that memorable Conference.

The next Dominion Legal Conference was to have been held in Wellington at Easter, 1940. It was to be Centennial year, and the Dominion Exhibition was to be a side-attraction for the visitors. In 1939, the Wellington District Law Society had made all its preliminary plans, and the indications pointed to a record attendance and a most successful forgathering. The outbreak of war put an end to planning; and, again, world conditions, reflected in our own country, caused another postponement.

In 1947, great success was achieved by the Conference held in Wellington. This, the first post-war gathering, was considered, intellectually and socially, as fully up to already high pre-war standards. It was remarked in these pages after the Conference that the most pleasing feature of the Conference was the large attendance of the younger men. They formed the majority of the visitors. Most of them returned servicemen, their interest in the Conference generally, their contribution to the papers read, and the part they took in the discussions at the business meetings augured well for the future success of the Conferences, and the well-being of the profession itself.

The Auckland Programme.

This year, Auckland is the appointed venue of the Conference, which will commence at 10 a.m. on Wednesday, April 20, with a Civic Reception by His Worship the Mayor of Auckland, Mr. J. A. C. Allum. Following the Mayor's address, the President of the Auckland District Law Society, Mr. V. N. Hubble, will extend a welcome to the visitors on behalf of the Society.

The Auckland Conference is singularly fortunate, as it is to be honoured by an inaugural address delivered by His Excellency the Governor-General, Sir Bernard Freyberg, V.C.

The first speaker at the Conference proper will be the Hon. Sir David Smith. It was hoped that a guest speaker from Australia, in the person of the Right Hon. the Chief Justice of the Commonwealth or a senior member of the High Court of Australia, would come to New Zealand at the invitation of the Conference Committee and address the Conference. Unfortunately, this could not be arranged, and Sir David Smith has very kindly consented to be the Conference's guest speaker. In the afternoon, two papers will be read. The first, by Mr. A. K. North, K.C., will be entitled "Law and the Public Conscience," and the second paper will be given by Mr. S. R. Dacre, of Christchurch, "Commentary on Tenancy Law," a subject of general interest to conveyancer and common lawyer alike. The Conference Ball will be held at the Peter Pan Cabaret on Wednesday evening.

The morning of Thursday, April 21, will be devoted to an address, "Some Aspects of the Tokyo War Trials," by Captain Quentin Baxter, of Christchurch, who has recently returned to the Dominion from Tokyo, where he was associated with the work of the International Military Tribunal for the Trial of Eastern War Criminals. The second paper will be delivered by Mr. H. R. C. Wild on "Questions of Office Organization," a subject of individual and general interest. In the afternoon, it is hoped that Mr. A. H. Johnstone, K.C., will give a short address on impressions of the law and lawyers gathered during his recent visit to England and Holland, where he attended the International Bar Association Conference as one of the delegates of the New Zealand Law Society. The formal business of the Conference will be concluded by an address by Mr. P. B. Cooke, K.C., the President of the New Zealand Law Society. In the evening, the Bar Dinner will be held at the Trans-Tasman Hotel. A very fortunate selection of speakers has been made, and the toast-list will not be as long as that arranged for the last two Conferences.

Friday is, of course, "Sports Day." A capable Sports Committee has in hand excellent arrangements for golf, bowling, and tennis contests. The usual happy gathering that ends the sporting activities of the Conferences will, this year, take place at the Middlemore Golf Links.

The visiting ladies are being well provided for. After attending the opening of the Conference, a morning-tea party has been arranged for them. On Wednesday evening, there will be the Ball. On Thursday morning, they will be entertained by being taken on a scenic drive, with morning tea *in transitu*. On Thursday evening, the night of the Bar Dinner, there will be a picture-party for the ladies; they will, of course, attend the tennis, bowling, or golf competitions, and their presence will add greatly to the success of the closing function. The Ladies' Committee of the Conference is an able and energetic one, and visiting ladies are assured of a very happy time in Auckland during the coming Easter week.

Pre-Conference Requirements.

The Auckland Committee has worked long and arduously in preparing a first-class programme for the Conference. The Conference Secretaries, Messrs. F. J. Cox and J. G. Sheffield, are untiring in their efforts to ensure the comfort and entertainment of their visitors. They are, however, partly frustrated in those efforts in not receiving applications for accommodation, always a difficult problem for Conference officials. Those practitioners who have already done their duty by sending to the Secretaries their requests for accommodation are fully satisfied with the arrangements made; but in Auckland, as elsewhere in New Zealand, the accommodation question is a very difficult one, and we suggest that practitioners will greatly lighten the burden of responsibility that rests upon the Secretaries—a self-imposed responsibility and anxiety to make the Conference a very happy one in every respect—by communicating to them at the earliest possible moment their desires and intentions in this respect.

SUMMARY OF RECENT LAW.

ANIMALS.

Cruelty causing Unnecessary Suffering—Mens Rea—Prima facie *Case against Defendant—Disproof of Guilty Mind—Police Offences Act, 1927, s. 7 (1)* (a). Where the prosecution establishes that poison used to destroy an animal was one that, from its corrosive nature, would only cause a lingering death, a *prima facie* case is established against the defendant under s. 7 (1) (*a*) of the Police Offences Act, 1927, for causing unnecessary suffering to such animal. If the defendant proves to the satisfaction of the Court that she had not a guilty mind, or if the Court is left in reasonable doubt whether, even if the explanation be not accepted, the act was unintentional, the information must be dismissed. (*Linssen* v. *Hitchcock*, (1915) 34 N.Z.L.R. 545, and *Woolmington* v. *Director of Public Prosecutions*, [1935] A.C. 462, followed.) *Campbell* v. *Sharp*. (Auckland. March 1, 1949. H. Jenner Wily, S.M.)

ADVERTISEMENTS.

"Advertise unto Others . . ." *112 Justices of the Peace Jo.*, 808.

The Control of Advertisements. *99 Law Journal*, 87.

BRITISH NATIONALITY AND NEW ZEALAND CITIZENSHIP.

British Nationality and New Zealand Citizenship Regulations, 1949 (Serial No. 1949/7), as to registration of New Zealand citizens; citizenship by naturalization; renunciation and deprivation of citizenship; and oaths of allegiance.

BY-LAW.

Building Construction—Removal of Building without Permit—Removal not "Construction." The removal of a building without a permit, since no building has been "constructed," is not prohibited by By-law No. 56 (*b*) of the Hawera Borough

Building By-laws, which is as follows: "Every person who shall construct or cause to be constructed any building or any part of a building, or any work of any description whatsoever, contrary to or otherwise than as provided by these by-laws, and who shall not, within a reasonable time after notice in writing shall have been given to him by the Inspector so to do, pull down, take away, or remove such building, part of a building, or work, or cause the same to be pulled down, taken away, or removed, or alter or cause to be altered the same so as to comply with these by-laws, shall be deemed guilty of a further offence against these by-laws: Provided that every such notice as last aforesaid shall state the time within which such pulling down or other operation is to be performed, and may be renewed from time to time, and the Inspector is hereby expressly authorized and empowered to give any such notice or renewed notice." (*Hoddinott* v. *Newton, Chambers and Co., Ltd.*, [1901] A.C. 49, distinguished.) Consequently, as the by-law did not authorize an order by the Borough Inspector for the removal of a building, the order was given without authority, and was invalid; and no offence had been committed by the appellant in failing to remove the building in terms of that order. *Giltrap* v. *Murray*. (New Plymouth. November 25, 1948. Fair, J.)

CONFLICT OF LAWS.

Private International Law—Deed of Settlement—Intention of the Parties—Proper Law of Deed—Deed executed in Scotland relating to Australian Property. The proper law of a trust deed is determined by the same tests as are applicable in determining the proper law of a contract. Where no actual intention appears either by implication or necessary intendment, the presumed or constructive intention of the parties is to be sought in the nature and the subject-matter of the deed, its incidents, the situation of the parties, such other matters as must have been within their contemplation, the circumstances of the transaction, the place where its terms are to be carried out, and the place with which the transaction has the most real and substantial connection. The place where the deed is executed may be a mere matter of convenience. A deed of settlement, to which there were four parties, three of whom executed the deed in Scotland and the fourth in Victoria, was prepared in Scotland, used terms of Scots law, and contained some provisions which, while valid in Scotland, were of doubtful validity according to English or Victorian law. The trust property, which consisted of shares, was entirely Australian, and mainly Victorian. The domicil of the settlor was Scotland, but his residence was in England. The deed provided that in a certain contingency the trust property was to be distributed according to "the law of England." The trust deed was retained in Melbourne, where all the work of administering the trust was done. For a period, part of the income was remitted to beneficiaries in England and Scotland, but all the trust assets were held in Melbourne. *Held*, That the proper law of the deed was Victorian law. *Lindsay* v. *Miller*, [1949] V.L.R. 13.

CONSTITUTIONAL LAW.

Colonial Laws Validity Act, 1865: *Chenard and Co.* v. *Arissol*. *206 Law Times Jo.*, 355.

CUSTOMS ACTS.

Export Prohibition Emergency Regulations—Offences—Validation of Regulations—Operative Effect under Customs Act, 1913—Breach of Regulations punishable as Customs Offence—Customs Act, 1913, s. 47—Emergency Regulations Act, 1939, s. 5—Export Prohibition Emergency Regulations, 1939 (Serial No. 1939/151), Reg. 7. The Emergency Regulations Act, 1939, not only validated the Export Prohibition Emergency Regulations, 1939, as regulations, but it also operated to make them regulations validly made under s. 47 of the Customs Act, 1913, with the result that the relevant penal provisions of that statute are applicable to all breaches of the regulations. (*F. E. Jackson and Co., Ltd.* v. *Collector of Customs*, [1939] N.Z.L.R. 682, referred to.) *McBeath* v. *Sharpe*. (Auckland. February 7, 1949. Luxford, S.M.)

DIVORCE AND MATRIMONIAL CAUSES.

Separation (as a Ground of Divorce)—Spouses' parting on Understanding that Married Life together should stop, and Assent thereto—Sufficient to constitute "agreement for separation"—Divorce and Matrimonial Causes Act, 1928, s. 10 (i). A husband and wife, who for a long period had been estranged, had no discussions before or leading up to an agreement to separate which was contained in the words "Can I go now?" uttered by the wife, and the assent given by the husband. This incident occurred after the wife's goods, which were on a carrier's van ordered by the husband, had been removed from the matrimonial home. On a petition for divorce by the husband, on the ground that the spouses had been parties to an agreement for separation, which had been in force for not less than three years, *Held*, That the understanding by the petitioner that the respondent wife was proposing that their married life together should stop and his assent to that proposal was sufficient to constitute an "agreement for separation" within the meaning of that term as used in s. 10 (*i*) of the Divorce and Matrimonial Causes Act, 1928. *Mc Kay* v. *Mc Kay*. (New Plymouth. March 1, 1949. Gresson, J.)

ECONOMIC STABILIZATION.

Economic Stabilization Emergency Regulations, 1942 (Reprint) (Serial No. 1949/11). These regulations are continued in force as stabilization regulations as if they had been made under the Economic Stabilization Act, 1948. This Reprint includes all amendments down to and including Amendment No. 14 (Serial No. 1949/10).

EVIDENCE.

Criminal Law — Assault — Cross-examination — Leading Questions—Discretion of Court as to when Leading Questions should be allowed or prohibited—Justices—Practice—Comment on Evidence for Informant—Submission that there is No Case to Answer—Reference to Evidence already given—Justices Act, 1928 (No. 3708), s. 88. There is no absolute right to put leading questions in cross-examination. If a witness shows partisanship towards the party against whom he is called, direct leading questions may, as a matter of judicial discretion, be forbidden in cross-examination. Where a Magistrate refuses to allow leading questions in cross-examinations, he should state his reasons for so refusing. In submitting to a Court of Petty Sessions that there is no case for the defendant to answer, counsel for the defendant is entitled to examine the evidence so far as may be necessary for the purpose of his submission. *Mooney* v. *James*, [1949] V.L.R. 22.

HUSBAND AND WIFE.

Wife deserted by Husband remaining in Matrimonial Home—Premises owned by Husband—Action for Possession on Ground of her Occupation without Right, Title, or Licence—Action framed in Trespass—Husband debarred from suing Wife in Tort—Married Women's Property Act, 1908, s. 17—Magistrates' Courts Act, 1928, s. 183—Landlord and Tenant—Jurisdiction—Husband Owner of Matrimonial Home—Desertion of Wife—Husband claiming Possession on Ground Wife a Trespasser—No Rent paid by Wife since Desertion—Question whether Tenancy existed—Determination involving Question of Title—Jurisdiction ousted—Magistrates' Courts Act, 1928, ss. 30, 180. A husband, who owned the premises occupied by him, his wife, and their child, left his home, and the district in which it was situated, and did not return. His wife obtained a maintenance order against him, she and the child remaining in occupation of the dwelling. She was willing that he should return to the matrimonial home. She had paid no rent. The husband served notice on her to quit. In an action by the husband for possession under s. 183 of the Magistrates' Courts Act, 1928, on the ground that the wife occupied the premises without right, title, or licence, or alternatively, under s. 180 of that statute, that she occupied them without payment of rent, and that notice to quit had been served on her, *Held*, 1. That the cause of action under s. 183 of the Magistrates' Courts Act, 1928, is an action framed in trespass to land, which is a tort; and, even if, since the husband's desertion, the wife were a trespasser, the husband was debarred by s. 17 of the Married Women's Property Act, 1908, from suing her in tort. (*Bramwell* v. *Bramwell*, [1942] 1 All E.R. 137, and *Hutchinson* v. *Hutchinson*, [1947] 2 All E.R. 792, followed.) (*Pargeter* v. *Pargeter*, [1946] 1 All E.R. 570, and *Hale* v. *Hale*, (1945) 4 M.C.D. 108, referred to.) 2. That, as to the cause of action under s. 180 of the Magistrates' Courts Act, 1928, the wife had not paid any rent, so that the Fair Rents Act, 1936, did not apply to the premises; and the learned Magistrate's jurisdiction in order to determine whether an order for possession should be made was ousted by s. 30 of the Magistrates' Courts Act, 1928, because, to decide that question, he would have to determine whether a tenancy had come into existence, or whether the property had been let, questions of title which did not arise incidentally. (*Spens-Black* v. *Kelburne and Karori Tramway Co., Ltd.*, (1912) 31 N.Z.L.R. 982, *Stansell* v. *Lane*, (1882) N.Z.L.R. 1 S.C. 254, and *New Zealand Express Co., Ltd.*

v. *Kettle*, (1903) 6 G.L.R. 160, applied.) *Semble*, Assuming these questions arose incidentally, there was no evidence from which it could be inferred that a tenancy existed; and, as s. 180 presupposes the relationship of landlord and tenant existing at the time of the determination of the tenancy, the plaintiff husband would also fail in that cause of action. *Harwood* v. *Harwood*. (Mosgiel. December 9, 1948. Dobbie, S.M.)

LANDLORD AND TENANT.

Liability in Tort. *206 Law Times Jo.*, 373.

LICENSING.

Sale without Licence—No Proof that Beer sold was "intoxicating liquor"—Court entitled to enter Conviction without Proof that Beer sold was within Definition—"Intoxicating liquor"—Licensing Act, 1908, ss. 4, 195—Licensing Amendment Act, 1948, s. 67 (4). The definition of "intoxicating liquor" in s. 4 of the Licensing Act, 1908, as amended by s. 67 (4) of the Licensing Amendment Act, 1948, is as follows: "Any spirits, wine, ale, beer, porter, cider, perry, or other fermented, distilled, or spirituous liquor which on analysis is found to contain more than three parts per centum of proof spirit." The definition must be divided into two parts: the first part comprises the well-known alcoholic beverages which are classified as spirits, wine, ale, beer, porter, cider, or perry; the second part comprises other fermented, distilled, or spirituous liquor which on analysis is found to contain more than three parts per centum of proof spirit. (*Fairhurst* v. *Price*, [1912] 1 K.B. 404, distinguished.) Once the prosecution proves, in an information for selling intoxicating liquor without a licence, that a sale of beer has been made by an unlicensed person, the Court, in the absence of any evidence to the contrary, is entitled to enter a conviction, notwithstanding that there is no evidence that the beer contained more than three parts per centum of proof spirit. *Richardson* v. *Yugoslav Society Marshal Tito (Inc.)*. (Auckland. February 21, 1949. Luxford, S.M.)

MASTER AND SERVANT.

Vicarious Responsibility. *206 Law Times Jo.*, 358.

MINES, MINERALS, AND QUARRIES.

Renewal of Licence for Mining Privileges—No Right of Objection by Member of Public—Mining Act, 1926, s. 176 (1) (e). A member of the general public has no statutory right to be heard by the Warden as an objector to the renewal of a licence in respect of mining privileges under the Mining Act, 1926. *Cook* v. *Dobbie*. (Dunedin. February 7, 1949. Christie, J.)

Water-race Licence—Application by Licensees for Renewal of Expiring Licence—Crown's Application for Licence in respect of Mining Privilege comprised in such Licences—Crown's Application valid—Mining Act, 1926, ss. 97, 169 (w), *176 (1)* (e), *177, 356—Mining Regulations, 1926* (1926 New Zealand Gazette, *3173*), *Reg. 59*. The holders of a water-race licence on March 15, 1945 (that is, within the period of one month immediately preceding the due date of expiry of the licence, which was April 2, 1945), filed in the office of the Mining Registrar at Cromwell an application for its renewal, and notice of the application was served on the Minister of Mines. On May 17, 1945, the Minister of Mines, pursuant to s. 97 of the Mining Act, applied for a licence on behalf of His Majesty the King in respect of the mining privilege comprised in the licence. On June 10, 1946, the application for the grant of a licence on behalf of His Majesty was adjourned by the learned Warden, who reserved the questions arising out of the Crown's application for the opinion of the Supreme Court. *Held*, 1. That the licensees' application was valid, notwithstanding that it was filed in the month immediately preceding the due date of the expiry of the licence, and not, as prescribed, not less than one month before expiry of the licence, as this was a defect which the Warden had the power to waive, and should waive, subject to any conditions he might think reasonable in the circumstances. 2. That the application for a licence in respect of the mining privilege comprised in the expiring water-race licence, made by the Minister of Mines, on behalf of the Crown, was a valid application, unaffected by any irregularity in the licensees' application for the renewal of their licence. *In re Perriam's Application*. (Dunedin. February 7, 1949. Christie, J.)

MOTOR-VEHICLES.

Driving Licence Disqualification. *99 Law Journal*, 88.

PRACTICE.

Practice and Procedure in 1948. *99 Law Journal*, 74.

Submission at close of Plaintiff's Case that No Case to Answer—Discretion of Judge as to whether Defendant must elect not to call Evidence. Where a defendant submits at the close of the plaintiff's case that there is no case to answer, it is in the discretion of the Judge to entertain such a submission without putting the defendant to his election as to whether or not he will call evidence. Proper matters for the Court to consider in the exercise of such discretion are the time and expense which may be saved if the defendant is not put to his election. *Sampson* v. *Edwards*, [1949] V.L.R. 6.

PROBATE AND ADMINISTRATION.

Points in Practice. *99 Law Journal*, 89.

RENT RESTRICTION (BUSINESS PREMISES).

Fair Rent—Fixation of Fair Rent—Requirements on Hearing of Application—"Special circumstances"—Tenancy Act, 1948, s. 9. The direction in s. 9 (1) that, on the hearing of any application to fix the fair rent of any dwellinghouse or property (not being licensed premises), the Court must have regard to the general purpose of the Economic Stabilization Act, 1948, is merely a general direction, subordinate to the more precise directions given to the Court by the other provisions of that section. (*Otago Harbour Board* v. *Mackintosh, Caley, Phoenix, Ltd.*, [1944] N.Z.L.R. 24, referred to.) Apart from that general and subordinate direction, the requirements of s. 9 of the Tenancy Act, 1948, with respect to the hearing of applications to fix the fair rent of business premises are as follow: The Court must determine what, in the circumstances of the case, are "relevant matters." Even if, in its opinion, the relative

circumstances of the landlord and the tenant are, in the case before it, within the category of "relevant matters," it must exclude those circumstances from its mind. If, on a consideration of all relevant matters which it is permitted to consider, it is of opinion that the "fair rent" should exceed the basic rent, it must then proceed to classify the relevant matters into (*a*) special circumstances (if any); and (*b*) other relevant matters. Having distinguished the "special circumstances" from the other relevant matters, it must then, on evidence produced by the landlord, assess the value of those special circumstances and determine whether they justify any increase above the basic rent, and, if so, the amount of the justifiable increase. The term "special circumstances," as used in s. 2 (2) of the statute, are those circumstances of a case that are peculiar to it; and, in relation to applications to fix the fair rent of business premises, the term is used to distinguish such peculiar circumstances from the normal or ordinary circumstances common to such tenancies. *Jewellers' Chambers, Ltd.* v. *Red Seal Coffee House, Ltd.* (Wellington. February 16, 1949. Christie, J.)

RENT RESTRICTION.

Rents and Neighbourhoods. *112 Justices of the Peace Jo.*, 791.

Sub-tenancy. *207 Law Times Jo.*, 1.

TRESPASS.

Damages—Notice—Lease of Grazing Rights—Lessor's Sale to Defendant Company—Company or its Servant removing Fence—Grazing Cows affected by Macrocarpa on Section then Unfenced—Grazing of Cows known to Company—Constructive Notice—Plaintiff's Rights—Company and its Servant both liable for Damage Caused. B., a dairy farmer, claimed from the defendant company, and alternatively from the second defendant, a servant of the company, damages for loss incurred by reason of his cows, while they were in calf, feeding on certain macrocarpa trees. It was alleged that the cows were given access to the deleterious foliage of the trees by reason of the defendant company's, or the second defendant's, trespassing on the land where the cattle were grazing, such land being occupied by the plaintiff under a

verbal agreement to lease from the B. & P. Co., which owned the freehold, and it had acquired the adjoining section. It was proved that the second defendant, a servant of the defendant company, had ordered the breaking down of part of the fence which had kept B.'s cows confined to the area leased by him and away from the company's newly-acquired section, and that the cows suffered and two of them died or had to be destroyed by reason of having eaten the foliage in question, and others yielded less milk during the season than they otherwise would have done. The defendant company alleged that the pulling down of part of the fence was done after possession had been given to it by the B. & P. Co. pursuant to the sale and purchase of that part of the land, and that it was within its rights in removing the fence between that section and the leased area. It was contended for the defendants that the defendant company was let into possession as purchaser without notice or knowledge of the plaintiff's rights. *Held*, 1. That, on the facts, the plaintiff had exclusive possession of that part of the section of land bought by the defendant company, which was included in the larger area being grazed by the plaintiff's cows, and both defendants were affected with constructive notice, and the fact that the defendants had noticed the cows was sufficient to put the defendants on inquiry to investigate the plaintiff's rights. (*Barnhart* v. *Greenshields*, (1853) 9 Moo. P.C.C. 18; 14 E.R. 204, *Taylor* v. *Stibbert*, (1794) 2 Ves. 437; 30 E.R. 713, *Allen* v. *Anthony*, (1816) 1 Mer. 282; 35 E.R. 679, and *Meux* v. *Maltby*, (1818) 2 Swan. 277; 36 E.R. 621, applied.) 2. That the removal of the fence caused damage to the plaintiff, and both defendants were liable for the damages as assessed. *B.* v. *Cement Products, Ltd., and Mitchison.* (Palmerston North. December 16, 1948. Herd, S.M.)

TRUST AND TRUSTEES.

Defeasance Clauses importing Opinion of Trustees. (F. C. Hutley.) *22 Australian Law Journal*, 413.

Some Aspects of Trusts in the Conflict of Laws. (Lester G. Hoa.) *26 Canadian Bar Review*, 1415.

VALUERS.

Subdivision of Land—Valuation for Purpose of Application to fix Basic Value of Sections—Scale of Fees fixed by Institute of Valuers—Fee fixed on Value of Land as Whole with Separate Fee for each Individual Section—Reasonable Basis of Remuneration—Valuers Act, 1948, ss. 16 (1), 17. A valuer was instructed to value 181 sections in a subdivision of land in the Auckland district for the purpose of an application to the Land Sales Court to fix the basic value of each section. The scale of fees fixed for its members by the New Zealand Institute of Valuers was £2 2s. per section, but it did not refer specifically to a valuation of the sections in a subdivided block of land. The valuer, following a local practice of valuers, assessed his fee on the basis of charging the prescribed fee on the capital value of the property as a whole, with the addition of a sum of 10s. 6d. for each section, irrespective of its value. On this computation, he claimed the prescribed fee of £12 12s., as on the total value of the property as a whole (£13,000), and 10s. 6d. on each of the 181 sections, making a total of £107 1s. He charged £3 15s. travelling expenses, and £3 13s. for attendance at the Land Sales Court. On a claim to recover the sum of £115 1s., made up as stated, *Held*, That, taking into account the time spent by the valuer and the amount involved, his claim was reasonable. *Semble*, The charges were those usually made by valuers in the Auckland district for similar work, and the plaintiff was entitled to recover the full amount of his claim. (*Renner* v. *Fraser*, (1911) 31 N.Z.L.R. 205, followed.) *Speedy* v. *Castaing.* Auckland. February 10, 1949. Luxford, S.M.)

WILL.

Construction—Annuities—Power to appropriate out of Estate Fund sufficient to answer Annuities out of Income thereof—Annuities charged upon and payable out of Corpus and Income of Residuary Estate. By his will, dated June 20, 1945, the testator, Frederick George Stevenson, made provision, *inter alia*, for an annuity, computed at the rate of £7 per week, to his widow; and an annuity, computed at the rate of £1 10s. per week, to his daughter. Clause 7 of his will was as follows: "And I authorize my trustees in case at any time with a view to the due administration or distribution of my estate it shall be deemed convenient so to do to appropriate and retain a sufficient part of my estate or of the investments representing the same being investments authorized by the Statute Laws of New Zealand for investment of trust funds for answering by the annual income thereof the said annuities but without prejudice to the powers of sale herein contained And I declare that if the annual income of the appropriated fund shall at the time of appropriation be sufficient to satisfy such annuities such appropriation shall be a complete satisfaction of the trust to provide for the said annuities and that after such appropriation shall have been made my residuary estate or the income thereof shall no longer be liable to provide for such annuities but may be appropriated and distributed forthwith among the persons entitled thereto and if the income of the appropriated fund shall at any time and from any cause whatever prove insufficient for payment of such annuities in full resort may be had to the capital thereof from time to time to make good such deficiency and the surplus income (if any) of the said fund from time to time remaining after payment of the said annuities shall be applicable as income of my residuary estate And I declare that as and when such annuities shall cease the appropriated fund shall sink into my residuary estate and that until the said annuities shall be provided for in manner aforesaid the same shall be paid out of the income of my residuary estate And I declare that the said annuities shall be paid clear of all deductions whatsoever including estate and succession duties income tax and Social Security and National Security Taxes and any other taxes for the time being." On originating summons for interpretation of that clause, *Held*, That the annuities bequeathed by the will were charged upon and payable out of the corpus as well as the income of the testator's residuary estate, as the gift was absolute, and no provision was made as to the source from which the annuities were to be paid. (*Breach* v. *Public Trustee*, [1940] N.Z.L.R. 365, followed.) *In re Stevenson (deceased), Mitchel* v. *Stevenson and Others.* (Invercargill. February 8, 1949. Christie, J.)

Devises and Bequests—Gift of Shares to Infant Son who survived Testator on his attaining Twenty-one Years—Such Bequest not carrying with it Intermediate Net Income earned by Shares between Testator's Death and Son's Attainment of his Majority—Annuity to Widow "so long as she shall adequately maintain and educate my children during their minority"—Condition during Children's Minority, but Widow's Life Interest not limited to Term of such Minority. Clause 2 of the testator's will provided: "I give and bequeath all shares held by me in W. Shaw and Company Limited a duly incorporated company having its registered office at Middlesboro England at the time of my death to my son William Alan Shaw if he shall survive me and shall attain or shall have attained the age of twenty-one years and I hereby declare that if my said son shall predecease me or shall survive me and die before attaining the age of twenty-one years my trustees shall stand possessed of the same upon the trusts and subject to the powers and provisions hereinafter declared and contained concerning my residuary estate." Clause 4 was, in part, as follows: "Subject to the provisions hereinafter contained I direct my trustees to stand possessed of all moneys payable under or by virtue of any such policy or policies as aforesaid and the balance of the moneys arising from such sale calling in and conversion and of such ready moneys as aforesaid (hereinafter referred to as 'the said trust funds') upon trust to invest the same in any of the investments authorized by this my will and to hold the same and the income thereof upon the following trusts that is to say: (*a*) Upon trust to pay to my wife Amy Alison Ferrers Shaw an annuity of two hundred pounds (£200) during widowhood and so long as she shall adequately maintain and educate my children during their minority." On an originating summons for the interpretation of the will, *Held*, 1. That the contingent legacy to the infant son, aged ten years, of the shares in W. Shaw and Co., Ltd., in cl. 2 of the will, did not carry with it the intermediate net income earned by those shares between the date of the death of the deceased and the date when the son attains the age of twenty-one years. (*In re Feather, Feather* v. *Public Trustee*, [1939] N.Z.L.R. 957, followed) 2. That the words in cl. 4 (*a*), "so long as she [the testator's widow] shall adequately maintain and educate my children during their minority," operated as a condition during the minority of the children; but they did not limit the widow's life interest to the term of their minority. (*Abbott* v. *Middleton*, (1858) 7 H.L.C. 68; 11 E.R. 28, and *Bathurst* v. *Errington*, (1877) 2 App. Cas. 698, referred to.) *In re Shaw (deceased), Guardian, Trust, and Executors Co. of New Zealand, Ltd.* v. *Shaw.* (Napier. December 8, 1948. Fair, J.)

WORKERS' COMPENSATION.

Employers' Indemnity Insurance Regulations, 1949 (Serial No. 1949/20), containing, *inter alia*, rates of premium in respect of all classes of worker (and see p. 76, *post*.

IRELAND IN INTERNATIONAL AFFAIRS.

A Footnote to Constitutional Law.*

By the Hon. John A. Costello, Prime Minister of Eire.

(*Concluded from p. 55.*)

To satisfy Irish aspirations for recognition of complete nationhood it was essential that Ireland should be accepted internationally as a full member of the family of nations. To be recognized as a full member of the family of sovereign states is the greatest mark and pride of nationhood. Complete international recognition was achieved well within the first decade of the life of the Irish State. One of the first steps taken by the new Irish Government was to apply for membership of the League of Nations, to which Ireland was admitted on September 10, 1923. This step was followed on July 11, 1924, by the registration of the Treaty of 1921 with the League of Nations by the Irish Government. The treaty was duly registered by the Secretary General, but the British Government addressed a note to the Secretary General on November 27, 1924, stating :

> Since the Covenant of the League of Nations came into force, His Majesty's Government have consistently taken the view that neither it nor any conventions concluded under the auspices of the League are intended to govern the relations *inter se* of the various parts of the British Commonwealth. His Majesty's Government consider, therefore, that the terms of Article 18 of the Covenant are not applicable to the articles of agreement of December 6, 1921.

The Irish Government replied to this in a note to the Secretary General of December 18, 1924, categorically rejecting the British contention that the Covenant did not apply equally to the relations of all the separate members of the League *inter se*, and maintaining accordingly that they were bound under article 18 of the Covenant to register the treaty with the League. The Irish note stated :

> The obligations contained in Article 18 are, in their opinion, imposed in the same specific terms on every member of the League, and they are unable to accept the contention that the clear and unequivocal language of that article is susceptible of any interpretation compatible with the limitation which the British Government now seek to read into it.

The matter was made clear in a statement issued by the then Minister for External Affairs on December 15, 1924. Reiterating the arguments in the official reply, he said :

> There are no distinctions between the members. None has special privileges and none is exempt from the obligations set forth in the Covenant.

Both the British and the Irish statements were registered by the Secretary General. The exchange had served to define the respective positions on what became, in the course of time, the principal battlefield of the controversy relative to the international status of the members of the British Commonwealth.

The issue arose again in connection with the signature in the year 1930, by the members of the Commonwealth, of what was known as the Optional Clause—the clause of the Statute of the Permanent Court of International Justice under which states, if they wished to do so, accepted the compulsory jurisdiction of the Court in disputes of a juridical character. The Imperial Conference of 1926 had recommended that " as a means of overcoming this difficulty " [*i.e.*, the controversy about the application of agreements *inter se*] all treaties other than agreements between Governments should be made in the name of heads of states. The Optional Clause was not in the form of a heads of states treaty. It was in form an agreement between " the members of the League of Nations and the States mentioned in the Annex to the Covenant."

Accordingly, the *inter se* issue arose again, and this time in a concrete form. In signing the clause, the British Government made its acceptance subject to a number of specific exceptions, one of which was :

> Disputes with the Government of any other member of the League which is a member of the British Commonwealth of Nations, all of which disputes shall be settled in such manner as the parties have agreed or shall agree.

The Dominions made their acceptance subject to reservations similar to those of Great Britain, but after careful consideration the Irish Government decided not to do so. The clause was signed by Mr. McGilligan, our Minister for External Affairs, " for a period of twenty years and on the sole condition of reciprocity." Thus Ireland went again on record as asserting the view that there was nothing in the composition of the British Commonwealth which prevented the relations between its members from being international relations in the fullest sense of the term, or which made the status of its members inferior in any particular to that of any other member of the League. On this occasion the validity of this view was acknowledged specifically by the British Foreign Secretary, Mr. Henderson, in the statement which he made explaining the reservations to the British signature, when he referred to the members of the Commonwealth as being " international units individually in the fullest sense of the term."

This view which we were maintaining might have, in practice, carried with it practical disadvantages, inasmuch as countries outside the Commonwealth might assert that if the members of the Commonwealth were international units in the fullest sense of the term, the tariff preferences and other advantages which they mutually accorded one another were properly claimable by other countries under the most-favoured-nation clause. That possibility was fully adverted to and steps were taken to provide for it. In the Treaty of Commerce and Navigation between the Irish Free State and France, signed at Dublin on June 23, 1931, a clause was inserted providing that nothing in the Treaty " shall affect the right of the government of the Irish Free State to modify, maintain, or extend preferential treatment in the matter of customs duties accorded only to states members of the British Commonwealth of Nations." The provision shows our concern to maintain and safeguard the benefits of the association, and it offered a headline as to how this could be done

* This is the text of an address delivered by the Prime Minister of Eire at the Annual Meeting of the Canadian Bar Association on September 1, 1948, at Montreal. It is reproduced here, by courtesy of the *Canadian Bar Review*. Without necessarily agreeing with the speaker's views, the address is a useful contribution to the study of Commonwealth Relations, as part of our Constitutional Law, as showing a lawyer's point of view not otherwise readily available. Mr. Costello has been one of the leaders of the Irish Bar and three of his senior Ministers are also distinguished barristers.

without arrangements derogatory to the status of its members.

The right of legation, so essential a characteristic of a sovereign state, was also exercised, and a lead thereby given to the other states members of the British Commonwealth of Nations. Ireland was the first member of the Commonwealth, other than Great Britain, to accredit a diplomatic representative abroad. On October 7, 1924, the first Irish Minister to the United States presented his credentials to President Coolidge. It is true that already in 1920 Canada had secured the right to appoint a Minister Plenipotentiary in Washington who would be specially concerned with Canadian interests and would take charge of the British Embassy as a whole in the absence of the Ambassador. But though the right to separate diplomatic representation had been established to that extent, it had not been exercised. The Irish Free State was the first member of the Commonwealth to exercise it, and what has now become a general practice throughout the Commonwealth was first established by Professor Smiddy's appointment in 1924. Diplomatic representatives were appointed subsequently to Rome, Geneva, Paris, Berlin, and other countries, and in consequence foreign legations and consulates were established in Dublin.

The right of direct access to the King was established, and in the year 1931 steps were taken by the Minister for External Affairs to exercise this right in matters relating to external affairs and in particular to determine the manner of the execution of certain documents of an international character. The Imperial Conference of 1926 had made it clear that the Governor-General was not the representative or agent of the British government, and in matters of internal administration acted exclusively on the advice of the Commonwealth Government concerned. In matters of external administration, however—for example, the issue of Full Powers and the instruments of ratification—the practice continued to be to tender advice to the King through the channel of the Dominions Secretary. The fact that this channel was used, and that the seal used on Full Powers and instruments of ratification was the Great Seal of the Realm, naturally created confusion in the minds of foreign governments and jurists as to the precise constitutional status of the Irish Free State and of the degrees of its exclusive responsibility for its diplomatic transactions. In 1931 Mr. McGilligan, then Minister for External Affairs, arranged that, in future, the Irish Government would advise the King direct on these matters and that a new seal—a seal struck, kept and controlled in Ireland—would be used in the execution of the documents concerned. It may be of interest to recall that on one of the occasions when Mr. McGilligan was exercising his right of direct access to the King, His Majesty King George V remarked to him that he always knew that the British constitution was elastic but added, " Aren't we stretching it a bit far these days ? "

In 1926 the delegation to the League of Nations asserted and established Ireland's right and the right of each of the other state members of the British Commonwealth of Nations to election as a free and independent state to the Council of the League of Nations. On that occasion Ireland was not elected to the Council, but, as the result of the establishment of the principle, Canada afterwards secured a seat on the Council and the way was prepared for the subsequent election of Ireland to a seat on the Council.

The treaty-making power of the State was also established. Treaties were negotiated and signed solely on behalf of Ireland by Irish Ministers. The Treaty of Versailles had been signed by representatives of the Dominions, but their signatures did not appear in their proper alphabetical order among the other signatory nations but were grouped together after the British Empire. The authority of the Dominion delegates was not derived from Full Powers issued by the King on the advice of the appropriate Dominion Ministers, but from Full Powers issued to them under the Royal Sign Manual and the counter-signature of the British Foreign Secretary. The delegates of Great Britain signed for the Dominions and the British Empire as a unit and under Full Powers from the King which were in no way limited territorially. In legal theory the only effective signature was the signature of the British Foreign Secretary. The signatures of the Dominion delegates were really nothing more than surplusage from the international point of view.

In the year 1923 a treaty between Canada and the United States, known as the Halibut treaty, was signed on behalf of Canada by Monsieur Lapointe alone, against the then existing practice which would have required the British Ambassador to sign. In June, 1927, the late Mr. Kevin O'Higgins, then Minister for External Affairs as well as Minister of Justice, and myself attended, at Geneva, the Conference for Naval Disarmament as plenipotentiaries for Ireland, each armed with a Full Power issued under the Royal Sign Manual without any counter-signature of a British Minister authorizing us to negotiate and conclude and sign a treaty for Ireland if we thought fit. I still have possession of the original of that document. The Full Powers of the British delegates to that conference were for the first time limited territorially to the area of Great Britain and the colonies, and those plenipotentiaries had no power to negotiate or sign anything on behalf of Ireland. The old practice was definitely ended, and the power of each of the nations of the Commonwealth to negotiate and sign treaties on its own behalf, even those treaties which were entered into between heads of state, was fully and internationally recognized.

With the passage of the Statute of Westminster, the sovereignty of Ireland and the other members of the Commonwealth was beyond all question complete and absolute. There was no bond or fetter, practical or theoretical, on their powers to order their destinies in accordance with the wishes of their own people. So far as our constitutional structure and our relationship with the Commonwealth was concerned, it was no longer a question whether or not changes required to be made to establish the fact of our sovereignty beyond all legal doubt; any possibility of doubt as to our sovereignty had been removed; the question had become *not* whether our association with the Commonwealth and the constitutional provisions in which it was expressed represented a limitation of our freedom or sovereignty, but whether our constitutional arrangements relating to these matters were in a *form* which the people as a whole could accept as being compatible with our national sentiment and historical tradition.

Nothing that has been done since the passing of the Statute of Westminster has added to or increased the stature or strength of the constitutional structure or the measure of our national freedom. What has been

done since then has been rather in the direction of using the legislative omnipotence of our Parliament that had been established to bring our constitutional and political institutions into accord with the traditional political concepts of our own people. The abolition of the oath of allegiance in 1932; the provision in the Irish Nationality and Citizenship Act, 1935, under which Irish citizens were declared to be Irish citizens for all purposes, national and international, and by which both the British Nationality and Status of Aliens Act, 1914, and the British common law relating to British subjects, were declared no longer to have the force of law in Ireland; and finally, the provisions of the new Constitution of 1937, under which the office of Governor-General was abolished in favour of an elected President and the British Crown denuded of all powers and prerogatives so far as the Government of Ireland was concerned—all may be explained as steps in this process of bringing our political institutions into closer harmony with national tradition and sentiment.

That constitution is radically different from those of Canada, Australia, New Zealand or South Africa. Instead of a Governor-General, we have a President of Ireland elected by universal popular suffrage. The executive power of the State is to be exercised by or on the authority of the Government, and the Crown is nowhere mentioned in the Constitution. By the Executive Authority (External Relations) Act, 1936, it is declared that so long as the state is associated with Australia, Canada, Great Britain, New Zealand and South Africa, and so long as the King recognized by those nations as the *symbol of their co-operation* continues to act on behalf of each of those nations (on the advice of the several Governments thereof) for the purposes of the appointment of diplomatic and consular representatives and the conclusion of international agreements, the King, so recognized, may act on behalf of the State for the like purpose and act when advised by the Government to do so. The inaccuracies and infirmities of these provisions are apparent. The Crown was the symbol of free association and not the symbol of co-operation; the formalities of the issue of Full Powers to negotiate or sign treaties are ignored, and the statutory provisions deal only with the appointment and not with the reception of diplomatic representatives.

In the time at my disposal it has been possible only to sketch the merest outline of our constitutional structure as it was fashioned and altered during the quarter of a century which has elapsed since the foundation of the Irish State. We have to deal with the existing position. The reasons for or the wisdom of the changes are not now in issue.

Article 5 of the Constitution declares that Ireland is a sovereign, independent, democratic state, and article 29, which recognizes that the state is, or may become, associated with a group or league of nations for the purposes of international co-operation in matters of common concern, would seem to be a constitutional authority for our association as a sovereign, independent, democratic state with the community of nations known as the British Commonwealth of Nations. Is it fruitful, with the mentality of the person who "would peep and botanise upon his mother's grave," to inquire too legalistically into the nature of that association, to insist that it does not conform to an existing pattern, or that the association has no common factor with traditional constitutional concepts?

The answers to these questions affect or may affect not merely Ireland but other states which are or may become hereafter associated with the league of free nations, the British Commonwealth of Nations.

Ireland is a small country. Its material wealth is comparatively insignificant, and it has no acquisitive or imperialistic ambitions. In its constitution Ireland affirms its devotion to the ideal of peace and friendly co-operation among nations founded on international justice and morality. Though a small nation it wields an influence in the world far in excess of what its mere physical size and the smallness of its population might suggest. We are sometimes accused of acting as if we were a big nation. I accept the accusation. We are a big nation. Our exiles who have gone to practically every part in the world have created for their motherland a spiritual dominion which more than compensates for her lack of size or material wealth. The Irish at home are only one section of a great race which has spread itself throughout the world, particularly in the great countries in North America and the Pacific area. More than ever to-day we conceive the need of the world for spiritual fortification when the dark forces of materialism are threatening the foundations on which the great Christian nations of the earth have endeavoured to build for their people peace and concord.

Before the American continent was discovered, Irishmen were bringing religion to the barbaric tribes of eastern Europe and teaching philosophy in the court of Charlemagne. St. Colmcille brought tidings of Christianity to the Pict, the Briton and the Scandinavian. He laid the foundations of the great monastic citadel of Iona which was to become the source from which missionaries carried the faith to Britain and Iceland. St. Columbanus dedicated his life to spreading the faith in France, Switzerland and Italy, and students from every part of Europe were welcomed to the famous Irish seminaries and colleges. All our national instincts urge us to co-operate with democratic countries and our missionaries still labour in the darkest parts of the world.

At present, when the world is living under the shadow of impending catastrophe which may well wreck our civilization, all peoples of good will must search for the method of building a citadel against such catastrophe. The western world has to some degree at all events failed to provide an adequate ideal around which the forces of Christianity and democracy may rally. Such a clear-cut ideal, based upon principles of Christian justice and charity, human rights and democratic rule, must be evolved and given practical reality.

When we in Ireland seek to find the state or group of states, with outlooks and ideals similar to our own, with which we would wish to be associated in the furtherance of that ideal, what is more natural than that we should be willing to maintain an association with the group of states comprising, on the one hand, the country which is at once our next-door neighbour and our most important market and, on the other, these great new countries overseas in which people of our own race constitute so large a part of the population. However much a force in world affairs and in the furtherance of the cause of world peace the associate states of the Commonwealth may be, their contribution can only be a part of a much more needed whole. To secure the peace that all desire it would be essential to bring about a greater degree of co-operation between all

nations sharing the same pattern of life and cherishing the same ideals. Economic rivalries have been a constant source of friction and war between nations. Efforts should be made to avoid a return to the economic rivalries which have existed in the past and to build an economic structure where mutual assistance and co-operation can smooth difficulties and avoid conflict. Is it too much to hope that this wider concept of international co-operation can be achieved ?

Canada and Ireland could each play a role of special importance to secure the acceptance and success of a broad concept of this nature. If a sure citadel for these ideals and freedoms is to be built in our time, must not its fabric comprise not only the nations of the Commonwealth but the United States of America as well ? Because of their geographical positions our two nations are in a position and in associations to act as a link between Europe and the western hemisphere. Canada, with its links with France and the British nations on the one hand and the United States on the other, is in a position to bridge many of the difficulties which may exist towards the achievement of closer economic integration.

In Ireland we feel that already we have been able to play a not unimportant role in bringing about a clearer understanding between western Europe and the United States in relation to economic co-operation. Forming part of the old world, we are in close touch with its problems and understand its philosophy and are fully conscious of its national susceptibilities and traditions. Ireland's role in international affairs must be to contribute its share to secure peace and order amongst nations, and to use the spiritual resources of its far-flung people to build bridges of understanding and good will between nations.

With the assistance of the forty millions of our race scattered throughout the globe, it should be possible to provide a force for spiritual good and world peace. Because of the close ties of blood and friendship that exist between Ireland and the American continent, we are better able to understand and appreciate the American way of life and political philosophy. Canada and Ireland might fruitfully share the task of laying the foundations of this new citadel of freedom which yet may shelter all free democracies in this threatened world.

LAND TRANSFER: LAND SUBJECT TO CAVEAT.

Dealings subject to Caveat.

By E. C. Adams, LL.M.

The purpose of this short article is to examine and discuss briefly the methods by which a registered proprietor under the Land Transfer Act, 1915, may deal with his estate or interest notwithstanding the existence of a caveat lodged against such estate or interest.

If the caveat has been lodged to protect an equitable estate or interest which is spent—*e.g.*, a lease or agreement to lease which has expired, or an agreement for sale and purchase which has been rescinded—the obvious thing to do is to get the caveator to withdraw. If he is dead, his legal personal representative may withdraw ; if he is dead and has no such representative, the caveat may be withdrawn by the person or persons whom the District Land Registrar thinks is or was entitled to the estate or interest protected by the caveat : Reg. 35 of the Land Transfer Regulations, 1948 (Serial No. 1948/137).

But it may be impossible to get the caveat withdrawn ; recourse may then be had to s. 154 of the Land Transfer Act, 1915, hereinafter explained, unless the caveat is to protect a trust or has been lodged by the District Land Registrar, in which two cases application to the Court by the registered proprietor under s. 152 of the Land Transfer Act, 1915, is the only remedy available to the registered proprietor.

Again, the caveator's claim may in fact not be adverse to the registered proprietor's proposed dealing. For example, the caveat may have been lodged by a *cestui que trust* not yet entitled to a transfer, or by a purchaser under a long-term agreement for sale and purchase. In these circumstances, the caveat ought to remain on the Register, and the caveator should, subject to his rights under the caveat, consent to the registration of all dealings not prejudicial to his claim. If the dealing presented is one which has priority over the caveator's claim, then the caveator should withdraw his caveat to permit registration of the dealing, and then lodge another caveat to protect his claim : *In re Swain's Caveat, Ex parte Royal Bank of Queensland, Ltd.*, (1902) St. R. Qd. 120.

If, however, there is a deadlock, or if the claim of the caveator has been extinguished and it is impossible to get the caveator to withdraw his caveat, the person seeking to register the dealing must present his instrument to the Registrar for registration and request him to send a notice to the caveator that application has been made to him to register the dealing. It ought to be pointed out in passing that the instrument sought to be registered must be a registrable instrument—*i.e.*, one which, but for the caveat, the Registrar would have to register *instanter*. As Hosking, J., asked in *Finlayson* v. *Auckland District Land Registrar*, (1915) 34 N.Z.L.R. 977, 983, why should a caveator be asked to fight shadows ?

On service of such a notice, the caveat (with the exceptions hereinafter noticed) will lapse on the expiration of the stipulated period, unless the caveator obtains and serves on the District Land Registrar an order from the Supreme Court or a Judge thereof extending the caveat. In the course of time, the Courts, both in Australia and New Zealand, have laid down certain principles in dealing with applications for extension of caveats. We shall briefly notice some of these principles.

(*a*) The caveator must establish his sincerity: *Howe* v. *Waimiha Sawmilling Co., Ltd. (in liquidation)*, [1921] N.Z.L.R. 110. If the Court thinks that he is merely blocking or obstructing the registered proprietor from dealing with his land, the Court will not extend the caveat.

(*b*) The caveat will be extended if the caveator establishes his *bona fides* and shows that he has a *prima facie* case for the protection of the Court. As a general principle, in dealing with applications for extention, the Court will endeavour to give the parties the fullest opportunity of litigating the matters in dispute: *In re Caveat of Lewis*, (1903) 23 N.Z.L.R. 581, and *Hakaraia te Whenua* v. *Bevan*, (1907) 27 N.Z.L.R. 56. Usually, the caveat is extended only for a sufficient period to enable the caveator to establish his title by properly constituted proceedings. Occasionally, a caveat has been extended indefinitely, or until further order: a caveator claiming under a valid long-term agreement for sale and purchase would, it is conceived, be entitled to such an extension.

(*c*) Usually, the rights of the parties are not finally dealt with in an application for extension of a caveat, but sometimes at the request of the parties the Court has determined the matter summarily: *In re Land Transfer Act, 1885, Ex parte Wellington Trust, Loan, and Investment Co., Ltd.*, (1894) 13 N.Z.L.R. 600.

If the caveator does not get an order for extension, and does not serve an order for extension on the District Land Registrar, within the prescribed period, his caveat lapses: s. 154 of the Land Transfer Act, 1915. Once a caveat has lapsed, the caveator cannot lodge a fresh caveat to protect the same estate or interest, without an order of the Supreme Court or a Judge thereof. Except in very exceptional cases, no such order would be made: a caveator who allows his caveat to lapse must be deemed for most practical purposes to have abandoned his claim: *Howell* v. *Union Bank of Australia, Ltd.*, (1888) 6 N.Z.L.R. 567, 572.

It is advisable to examine the wording of this important section, which reads as follows:

> Except in the case of a caveat lodged by or on behalf of a beneficiary claiming under any will or settlement, or for the protection of any trust, or by the Registrar in exercise of the powers by this Act given to him in that behalf, every caveat in the Form L shall, upon the expiration of fourteen days after notice given to the caveator that application has been made for the registration of any instrument affecting the land, estate, or interest protected thereby, be deemed to have lapsed as to such land, estate, or interest, or so much thereof as is referred to in such notice, unless notice is, within the said fourteen days, given to the Registrar that application for an order to the contrary has been made to the Supreme Court or a Judge thereof, and such order is made and served on the Registrar within a further period of fourteen days.

The advantage of this procedure from the viewpoint of the registered proprietor is that the responsibility is immediately cast upon the caveator to make application to the Supreme Court or a Judge thereof, and he must act with great promptitude.

If he fails to notify the District Land Registrar before the expiration of fourteen days (the fourteen days being counted, not from the date of the notice, but from the date the District Land Registrar's notice reached the caveator, or would have reached him in the ordinary course of the post: *Wilson* v. *Moir*, [1916] N.Z.L.R. 480) that he is taking the necessary action in the Supreme Court, the caveat, as previously noticed, will lapse, or, if it affects more than one parcel of land, it will lapse as to the parcel or parcels included in the dealing presented for registration. The caveat will also lapse or partially lapse, as the case may be, unless the caveator follows up his notice to the District Land Registrar by serving on him within a further fourteen days an order of the Supreme Court or a Judge thereof extending the caveat.

It is understood that it is the practice of the Supreme Court to treat applications by caveators under s. 154 as most urgent. The writer has known of instances where extensions of caveats have been made during the legal vacation. In one instance, the order of extension was duly obtained on or about Christmas Eve, but the solicitor acting for the caveator did not serve it on the District Land Registrar until the law offices had resumed after the New Year; it was then too late, as the caveat had lapsed, the dealing had been registered, and presumably the person claiming thereunder obtained an indefeasible title.

Now, if the caveat which is blocking the registered proprietor is to protect a trust, or is one lodged by the District Land Registrar, the registered proprietor himself must take the initiative by taking proceedings in the Supreme Court under s. 152 of the Act. He must summon the caveator, or the person on whose behalf such caveat has been lodged, to show cause why such caveat should not be removed. The registered proprietor, or any other person having any registered interest or estate protected by the caveat, may also summon the caveator under this section, even if it is not a caveat to protect a trust, or a Registrar's caveat. This was the course taken in *Howe* v. *Waimiha Timber Co., Ltd.*, [1921] N.Z.L.R. 110, most protracted litigation over a grant of timber rights, which culminated in the Privy Council, in the defeat of the caveator claiming under such grant: see *Waimiha Sawmilling Co., Ltd. (in liquidation)* v. *Waione Timber Co., Ltd.*, (1925) N.Z.P.C.C. 267, where the full course of the litigation is indicated in their Lordships' judgment.

Presumably, in dealing with applications by registered proprietors and others to have caveats removed under s. 152, the Supreme Court applies the same principles as it does in applications by caveators for extension of caveats under s. 154, and some of these principles I have endeavoured to summarize above. But, under s. 152, the caveator appears to have one advantage: if an order for the removal of the caveat is made, he may appeal against such decision to the Court of Appeal, which may uphold the caveat. If a person dealing with the registered proprietor knew that such an appeal had been made by the caveator, such person would not, it is submitted, get the benefit of an indefeasible title; that appears to be the inference to be drawn from *Howe* v. *Waimiha Timber Co., Ltd.* (*supra*). It is apprehended, however, that to-day in similar circumstances a Judge of the Supreme Court would not remove a caveat *instanter* on an application by the registered proprietor under s. 152, for, in that case, at the date of the hearing of the summons under s. 152, the caveator grantee had lodged an appeal to the Court of Appeal against the decision of the Supreme Court declaring that its grant of timber rights had been determined, and in due course it obtained a verdict in the Court of Appeal upholding the continued validity of the grant. But, as the registered proprietor of the freehold, as soon as possible after the order removing the caveat, had

transferred the freehold to a third party, the Privy Council, by applying in favour of such third party the principle of indefeasibility of title conferred by registration under the Land Transfer Act, 1915, deprived the caveator grantee of the fruits of the judgment which it had obtained in the Court of Appeal. This rather unsatisfactory result to most protracted litigation would have been avoided had the caveat not been summarily removed at the behest of the registered proprietor under s. 152.

EMPLOYERS' INDEMNITY INSURANCE.

Workers' Compensation Amendment Act, 1947, operative on April 1.

Part I of this Act, which restricts the transaction of employers' liability insurance, comes into force on April 1, 1949. When the Bill was introduced, it provided for a complete monopoly by the State Fire Insurance Office of this class of insurance. Before the Act was passed, provision was made by ss. 4 and 5 to permit certain institutions to give insurance to restricted classes of employers, subject to the approval of the Compensation Court as regards the terms of the insurance and the financial stability of the institution.

The insurers who may give cover are the New Zealand Rules of Racing General Trust Fund, the New Zealand Counties Co-operative Insurance Co., Ltd., three Farmers' Union mutual fire insurance associations, three sawmillers' mutual accident insurance companies, and the New Zealand Master Bakers' Mutual Indemnity Association. No doubt all of these will have sought and obtained the necessary Court approval before April 1.

Further, any local authority or any Education Board which satisfies the Compensation Court that it has adequate financial resources may be permitted by the Court to carry its own insurance: s. 5.

The cover given by the State Fire Insurance General Manager is defined by s. 11. The employer is indemnified against his liability under the Workers' Compensation Act, 1922, and its Amendments, the Deaths by Accidents Compensation Act, 1908, the Coal-mines Act, 1925, the Mining Act, 1926, Parts I, II, V, and VI of the Law Reform Act, 1936, and at common law. The indemnity is unlimited as to amount. The other insurers are required by ss. 4 and 5 to give indemnity as great as that given by the State Fire Insurance General Manager.

Wages Statements by April 30.

In regard to premiums, s. 13 requires every employer (other than an employer who is insured with one of the permitted insurers) to deliver to the State Fire Office within one month of April 1 a statement of the wages paid by him for the year ended March 31 and an estimate of the wages which he expects to pay during the year commencing on April 1. Upon receipt of this wages statement and estimate, the local Branch of the State Fire Office will, as soon as practicable, assess the premium payable and render a demand for payment. Payment of this premium is required within one month after date of assessment. A penalty of 5 per cent. is provided if the payment is late, but the General Manager is given power to remit this penalty in whole or in part.

It is understood that towards the end of March a wages-statement form will be sent by post to every business firm and to every farmer on the Post Office householders' list. Wages-statement forms may also be obtained from Branch Offices of the State Fire Office and from Post Offices in towns where the State Fire Office has no branch. Claims forms may also be obtained from Post Offices. Premiums are payable to the Branch Offices of the State Fire Office, but not to agents of the Office.

Adjustment of Premiums.

It is understood that at the large centres there may be a time lag in completing assessments, and that some employers will not receive their assessment notices until August or September.

At the end of the period of insurance, the wages paid are ascertained and the premium is adjusted accordingly.

The employer is indemnified even in a case where he has not made a wages statement and has not paid a premium. The employer is, however, liable upon summary conviction to a fine not exceeding £100 for failing to make the required wages statements within the time prescribed.

Extent of Indemnity.

Every employer is indemnified by the Act against his liability to those of his employees who are workers in any employment to which the principal Act applies. An employer may, however, have employees who are not "workers"—for example, a gardener who works one day each week. Provision has been made by s. 20 for the insurance of such "non-workers." Under this section, the employer may state in his wages return that he will be employing members of his family, or persons named or described who are not "workers," or persons named or described who perform services free of charge. The employer may state a rate of remuneration for such persons and the General Manager may assess a premium for the insurance of such persons and may then insure them as if they were in fact workers. This provision is likely to be greatly used by employers, as it permits them to obtain Workers' Compensation benefits for employees who, without the provision, could be uninsured. It also provides a method of obtaining indemnity against common-law liability to employees who are not workers.

Section 44 provides that "a member of the family" of an employer is not a "worker," but may be insured

in accordance with s. 20 for Workers' Compensation Act benefits. Indemnity against common-law liability to a " member of family " is not given.

ACCIDENTS AND CLAIMS.

Section 22 requires an employer to give notice as soon as practicable of any accident which causes injury to his worker. If the employer receives notice of a claim he is required to give notice to the General Manager within three days.

Section 23 deals with the settlement of claims. The procedure appears to be based on the practice which has in the past been followed by insurance offices, except that there is no provision for the insurance being void even in the case of misrepresentation or fraud.

The Employers' Indemnity Insurance Regulations, 1949 (Serial No. 1949/20) have just been issued. The rate of premium for all engaged in law offices comes within the rate for " clerical " staffs, and is 9d. per cent.

SIR PATRICK HASTINGS, K.C.

An Autobiography to Read.

By T. A. GRESSON.

During the Christmas vacation one of the senior Wellington counsel took a well-earned holiday in Akaroa, and *en route* was kind enough to lend a fellow-member of the Canterbury Bar Sir Patrick Hasting's *Autobiography*.* This gratuitous bailment, though transacted at the breakfast-table, was doubtless *uberrimae fidei*, and accompanied by the usual solemn pledges as to prompt return ; but, in accordance with the long-established practice in these matters, the book is now in free circulation amongst the Canterbury Bar, and it was my good fortune to read it last week-end.

It was so enjoyable that I feel sure it will be read throughout the profession ; and it might, therefore, be of interest if I mention one or two matters which attracted my attention in it.

Among the cases referred to is *Wootton* v. *Sievier*, [1913] 3 K.B. 499, in which two famous racing men sued each other for libel. Wootton was a well-known trainer, and Robert Sievier's name was a household word upon the English Turf, so that both provided great interest for a sensation-loving public.

A short time previously, Sievier had been tried in the Central Criminal Court on a charge of attempted blackmail, and, after a trial which lasted several days, in which he had the distinction to be prosecuted by Sir Edward Carson and defended by Sir Rufus Isaacs, he was triumphantly acquitted, as Sir Patrick states, " largely through his own counsel's skill."

It was obvious from the outset that the subsequent libel action would probe deeply into the lives and personal reputations of both parties, and it therefore surprised me to read that the trial took place before Lord Reading (as he had now become) and a special jury, and that Sir Patrick's only comment is that " Sievier was no doubt delighted to learn that his Judge should be the very man who had defended him upon the earlier indictment." This, however, did not avail him, for " good old Bob," as Sir Patrick points out, had lived a somewhat hectic life, and foundered under cross-examination. In the course of this, he appealed in vain to the fact of his earlier acquittal, only to be reminded, as one would expect, that the Court would be guided solely by the evidence before it, to the exclusion of all outside considerations.

It can confidently be assumed that this was so, but I wonder whether any of our own Judges would feel free, in similar circumstances, to hear a case involving the personal reputation of someone who had so shortly before been their client ? Or would they feel constrained to decline to take the trial, so that the impersonal and impartial independence of the Bench should be publicly maintained, and thus exclude even the possibility of criticism ? Lord Reading was no doubt perfectly satisfied with the propriety of his action, and I may be mistaken, or even impertinent, in questioning it, but the matter is one on which it would be interesting to have the opinion of your readers.

Sir Patrick also describes a prosecution at the Maidstone Assizes when, at a day's notice, he was instructed to act as junior counsel for the defence, being led by Montague Shearman, who, as he says, was appearing at the trial at an enormous fee. Hastings's own brief and cheque for 400 guineas arrived simultaneously, but found him in bed with a severe attack of chicken-pox. However, to Maidstone he went, smothering his pock-marked face with fuller's earth, only to find on his arrival that the Grand Jury had thrown out the bill. By two o'clock that day he was back in bed, but the cheque for 400 guineas was safely in the bank.

As he says himself, this was a financial milestone in his career, but, by comparative New Zealand standards, it seems hard to justify the retention of such a cheque, though no doubt it is completely in accordance with the English practice, and stems from the separation of the two professions, and the perhaps admirable practice of forwarding a cheque with counsel's brief when he is first retained.

When discussing Horace Avory, for whom he clearly has an immense admiration, Sir Patrick asserts that " he never made a note, but retained every detail of the most intricate litigation in his memory," and further says that this was an example which he always tried to follow, and " since the day I joined him I have never made a note myself, and have never allowed my pupils to do so either." It is consistent with this that, when in 1924 circumstances compelled him as Attorney-General to outline his part in the political crisis over the Campbell case, which ultimately resulted in the fall of the first Labour Government, Sir Patrick was unable to let the Prime Minister have a copy of his speech in advance, as this simply was not written out.

Many will agree that refusing to write out a speech in advance has much to commend it, but to have no notes or subheadings must surely impose an intolerable strain on the memory and mental processes of even the most gifted advocates, and it would surely be impossible to argue intricate legal points without notes,

* London, William Heinemann, Ltd. (1948).

even when full allowance is made for the comparative perfection of counsel's brief as finally presented to him in England. On the other hand, for all I know, there may have been Bar leaders here with similar special gifts in this respect.

The final point which struck me forcibly was Sir Patrick's reference to an incident with Marshall Hall. Lady Mond had apparently sent a valuable pearl necklace to a firm of jewellers to be cleaned, and alleged that, due to some neglect, the pearls had been injured by excessive heat. Marshall Hall was for the defence, and he was, of course, an expert on jewels of all kinds, and came into Court flamboyantly surrounded with big pearls, little pearls, and all the varied appliances required for testing their value.

The defence was that pearls could not possibly be affected by heat, and Marshall Hall was prepared to give and "in fact gave a great deal of personal evidence upon the subject." The plaintiff was in danger of being swamped by his enthusiasm, when, according to the story, a Jewish gentleman came to Sir Patrick's rescue by handing him two magnificent pearls in a handsome velvet case, with the suggestion that, as Marshall Hall was such an expert in pearls, he should be asked to examine these pearls and say which of them was burned, and how much its value had depreciated.

Marshall Hall, we are told, entered into the test with enthusiasm, and finally gave his expert opinion thus: "My Lord," he said, holding up the larger of the two, "this pearl has undoubtedly been affected by excessive heat." "Never mind about that," shouted the little Jew, "how much of the value has been lost?" Marshall Hall pondered deeply. "Without further examination, it is difficult to express a decided opinion, but I should estimate the damage at about £500." The Jewish gentleman leapt to his feet: "Tell him they're duds," he said, in a voice that all could hear. "He can have them both for a bob!"

Thespis indeed had vanquished Portia! Why should Marshall Hall or any other counsel give personal evidence upon the subject of pearls or anything else, and of what possible significance could counsel's opinion as to the test pearls be to the Court? And, even if such generous latitude had been allowed by the presiding Judge in this respect, it is hard to understand the complete freedom with which the Jewish gentleman bobbed up and down in his seat, and in and out of the proceedings. Perhaps the explanation may lie in the fact that counsel concerned were talented performers, and, if they were prepared to allow such theatricals, the learned Judge felt no inclination to restrict the pantomime!

The whole book is lively reading, and Sir Patrick emerges as every inch an advocate, but one who can look back with humour, tolerance, and affection on a lifetime at the English Bar.

MR. JUSTICE CHRISTIE.

Wellington Bar's Farewell.

On the eve of his retirement from the office of Temporary Judge of the Supreme Court, Mr. Justice Christie was farewelled by members of the Wellington Bar, who, as the President of the Wellington District Law Society said, expressed to him their regret at his impending retirement.

Mr. Phillips recalled that His Honour was born near Lawrence. In being born in the South Island, and particularly in Otago, he took the first steps of a well-defined judicial path. After working on the staffs of the Treasury and the Crown Law Office, he was appointed Law Draughtsman and, subsequently, Compiler of Statutes and Counsel to the Law Drafting Office, from which latter offices he retired in 1945.

"During your tenure as Law Draughtsman, it fell to your lot, not only to prepare works requiring dreary research coupled with meticulous accuracy, such as the *New Zealand Statutes Reprint*, but also to initiate entirely new legislation," Mr. Phillips continued. "Some statutes falling under this latter head are the Motor-vehicles Insurance (Third-party Risks) Act, 1928, the first Unemployment Acts, and the Social Security Act. These and many other Acts will always remain a monument to your ability.

"During part of your long period spent in the Public Service, you were closely associated with two of our most outstanding lawyers. One was the late Sir Francis Bell, who was one of our greatest legal administrators, and with whom you worked when he was Attorney-General. The very high opinion Sir Francis had of your ability as a draughtsman is well known. The other was the late Sir John Salmond, who was probably the greatest lawyer this country has known. Your association with Sir John was a long one: it began when he was a Professor and you were a student at Victoria College; it continued when Sir John was Solicitor-General and you served under him in the Crown Law Office; and it concluded when Sir John was counsel to the Law Drafting Office and you were Law Draughtsman. The association between you in the drafting of legislation was always a close one. It was even closer when you assisted him in the revision and completion of his two great works on Torts and on Contracts.

"Upon your retirement from the Public Service, you were known to us as an eminent draughtsman and a sound lawyer. You sacrificed the leisure for which you had worked so long in order to take a seat on the Bench. The profession will always be grateful to you for the sacrifice you made, and for the courage and determination you showed, in becoming a Judge of the Supreme Court. Those whose privilege it has been to appear before you will never forget your unfailing courtesy and your consideration. You have carried on the best traditions of our Supreme Court Bench. Litigants leaving your Court, even though unsuccessful, left it with the conviction that their case had been fairly tried. In the administration of criminal law, which must necessarily have been largely new to you, your humane but just outlook will always be acknowledged.

"In the near future, we will lose you as one of our Judges. There will, however, always remain between your Honour and the members of the Bar the bonds of true friendship, respect, and admiration which your association with us has engendered. We trust that you and Mrs. Christie will enjoy for many years the peaceful leisure which you have now, doubly, earned.

"I have been asked by the Honourable the Attorney-General, Mr. Mason, to express to your Honour his great regret at being unable to be present this morning. He had intended being with us, but was delayed by official duties at the last moment. He desires me to tell you how grateful to you are both the Government and himself for your assisting them by accepting the office of a Temporary Judge and by the manner in which you have so usefully carried out your duties during your term of office."

Mr. Justice Christie, in reply, said that he was exceedingly grateful for the kind remarks made about him. His Honour recalled some words written by a friend of his in what was then called a birthday-book of a girl employed in the friend's office: "The only permanently satisfying thing in life is employment; the rest is composed first of hope, then of disappointment, and lastly of indifference." He did not accept this statement in its entirety, but he thought that all those present knew that, without work, there could be no real happiness in this life.

His Honour continued: "As Mr. Phillips said, this is the second time at which I have, so to speak, sung a swan-song. When I retired from the Law Drafting Office, I paid what was a necessary tribute to my old school, schoolmasters, and certain other friends who helped me towards a certain measure of success in life. I do not think there is any occasion for me to repeat these expressions of gratitude. But, reflecting afterwards on what I said then, I came to the conclusion that I should in justice have gone one step further back in my life's history: I should have paid tribute to my father and mother. There were no silver spoons in the home I was brought up in—and I did not miss them. But I had something that some children

(*Concluded on p. 80.*)

IN YOUR ARMCHAIR—AND MINE.

By Scriblex.

Bowling Tourney.—The first legal bowling tournament was recently held in Wellington on the afternoon of the gaming and licensing poll, so that at least it may be said that the indecision of politicians was put to good purpose. The organizers are to be congratulated upon a most successful gathering, at which members of the profession mixed in amiable competition with representatives of the Stamp Office, Land Sales Committee, and other Governmental institutions. Presenting trophies to the winning team, the President of the Wellington Law Society said that bowls appeared to him to have certain definite advantages over golf—in the best appointed rinks, it was not difficult to find the bowl when it disappeared from view in the grass; and, better still, what walking the game compelled could be done over relatively smooth terrain.

The Female Touch.—At the farewell held for him in the Supreme Court at Wellington, Christie, J., referred to the great assistance he had had from his wife, who accompanied him on his circuit work (which was most extensive in both Islands), and who acted as a "sounding-board" when he had to come to decisions on issues tried by him. This frank avowal recalled to the irreverent mind of Scriblex the lines of Lewis Carroll in *Father William*:

> *"In my youth," said his father, "I took to the law,*
> *And argued each case with my wife;*
> *And the muscular strength which it gave to my jaw*
> *Has lasted the rest of my life."*

As was well said at the gathering, at which a large number of practitioners were present, no more conscientious Judge has sat on the Bench, and many a country practitioner has had reason to feel indebted to Christie, J., for his kindly consideration.

Talking at Random.—Scriblex discovers that Douglas Woodruff, noted for his erudite and light-hearted excursions over the B.B.C. on history, legend, and literature, has written a third "jottings" book, *Still Talking at Random* (Hollis and Carter, Ltd.), and the following extracts of legal flavour are unblushingly appropriated (the labels alone belong to Scriblex):

On Divorce.—In a recent Australian divorce, the wife's name was given as *Veni Vidi Vici Ware*. But this was not alleged against her by the husband, who had gone and seen and conquered somewhere else.

On Misrepresentation.—Among some Japanese stores captured at the end of the war, there was some drink labelled "King Victoria Whisky—made only from the very best grapes."

On Prolixity.—"You have said that already," said a Victorian Judge to a very prolix and tedious counsel, "but it was such a very long time ago that perhaps you have forgotten."

On being in Charge.—A friend from Dublin told me of two convivial motorists and their conversation: "Better drive a bit carefully now. We're getting near a town." "How do you know that?" "Why, we're knocking down more people." And a little later, more agitated, "For heaven's sake, man, we're obviously getting into a town; you must drive more carefully." "What, me? You're driving!"

On Taxation.—I remember hearing Lord Jowitt tell of his experience as Attorney-General, arguing a tax case in the Lords, where one of the Law Lords asked him if he agreed that "a man is not bound so to arrange his affairs as to attract the maximum taxation to himself"; and he accepted the proposition.

From My Note-book.—In *Winnan* v. *Winnan*, [1948] 2 All E.R. 862, a woman's preference of cats to her husband, and her refusal to give them up when a number of them constituted a nuisance and injured his health, was found by the Court of Appeal to constitute desertion on her part.

In *In re Hopkinson* (*deceased*) (January 13, 1949), where a testator had directed his trustees to stand possessed of his residuary estate "as an educational fund for the advancement of adult education, with particular reference to the education of men and women of all classes on the lines of the Labour Party's memorandum to a higher conception of social, political, and economic ideas and values, and to the personal obligations of duty and service which are necessary for the realization of an improved and enlightened social civilization," it was held that, although he believed he was establishing the nucleus of an educational trust, one for the attainment of political objects has always been held invalid, not because such trust is illegal, but because political propaganda was not education.

DOMINION LEGAL CONFERENCE.

An Urgent Request.

A considerable number of practitioners who are attending the Conference have not yet advised the Conference Secretaries which of the various functions they wish to attend. This applies particularly to practitioners who have arranged their own accommodation.

It will be appreciated that the information requested in the questionnaire already circulated provides the basis for catering and other arrangements.

It will greatly assist the Conference Secretaries if practitioners attending the Conference and who have not already supplied the information requested will advise the Secretaries immediately whether they wish:

(*a*) To attend the Conference Dinner.
(*b*) To attend the Conference Ball.
(*c*) To play golf, tennis, or bowls.

The Secretaries will also be pleased to know the names of all ladies who will be attending the Conference, and they particularly wish to have the names of those who will be playing tennis.

The Conference Secretaries' address is:—

P.O. Box 747,
Auckland, C.P.O.

PRACTICAL POINTS.

1. Law Practitioners.—*Income Tax—Expenses of attending Dominion Legal Conference.*

QUESTION: I should be glad to know if practitioners attending the forthcoming Legal Conference at Auckland may deduct from their income-tax return, for the tax-year in which it is held, the total of such expenses.

ANSWER: This question was recently raised in Australia, where the Secretary of the Law Council asked the Acting Federal Commissioner of Taxation whether there could be deducted for income-tax purposes the expenses incurred by a member of the legal profession in attending the Convention of the Law Council of Australia which, in all material respects, is similar in constitution and purpose to the biennial Dominion Legal Conference in this country.

In part, the answer of the Commissioner was as follows:

"In considering the deductibility of travelling-expenses incurred by a taxpayer in carrying on a business of a professional nature, it is necessary to recognize that expenses of a capital, private, or domestic nature are not deductible. Accordingly, travelling-expenses incurred in gaining academic qualifications or other advantages of a capital nature are not allowable deductions.

"On the other hand, travelling-expenses incurred by taxpayers for the purpose of maintaining professional efficiency have been treated as deductible. In accordance with this principle, members of the legal profession who carry on business and incur expenses in attending the proposed Convention of the Law Council of Australia will be entitled to a deduction in respect of the expenses incurred in attending the Convention, except to the extent that the expenses are outgoings of a capital, private, or domestic nature. The deductible expenses will include the costs of travelling to the Convention and normal accommodation expenses for the taxpayer himself."

It may be that the Australian provisions as to deduction are slightly wider than those contained in the Land and Income Tax Act, 1923; but whether or not the Commissioner would take the same view as the Federal Commissioner is one of those unpredictable speculations to which only a concrete case will provide an answer. B.2.

MR. JUSTICE CHRISTIE.

of to-day lack, and that is careful instruction in moral principles and unswerving love on the part of my mother. I was brought up on the Shorter Catechism, the New Testament, the metrical version of the Psalms of David, and the Golden Rule—with the occasional application of the leather belt. With such a Presbyterian upbringing, it was a real triumph of restraint that I have never, until to-day, used the word 'sin' when I meant 'crime.'

"As to my appointment to the Bench, it was absolutely unsought and unexpected. As to my qualifications, I myself was exceedingly doubtful of them; nevertheless, I accepted the position, and I have done my best. One or two qualifications I do possess: first of them is tolerance towards my fellowmen. I never felt divorced from even the criminal in the dock. I have always thought, or remembered, that we are all bound by the common tie of humanity. I have, I think, love of justice and fair play. I am sure that I have endeavoured to fulfil the terms of my judicial oath to do justice without fear or favouritism. I have done it not always without fear, but, I think, have always succeeded in doing it without favouritism."

After acknowledgment of his indebtedness to the present Chief Justice and his brother Judges, who, he said, had admitted him to the full privilege of brotherhood with them, and of the courtesy and attention he had received from the staffs of the various Courts in which he had sat.

His Honour, after paying a tribute to the assistance he had received from his wife, particularly during circuits, in which she had always accompanied him, concluded as follows:

"Finally, I wish to thank every member of the Wellington District Law Society, and every barrister who has appeared before me, here or elsewhere, for the able way in which they have done their work, and for their uniform courtesy and their seemly behaviour, so upholding the dignity of the Court, and making it worthy of respect, and, in fact, respected."

His Honour, from the floor of the Court, bade farewell to each practitioner who was present.